

## **Options open to parties in a contested water right case when a preliminary order has been issued by the Idaho Department of Water Resources**

A “**Preliminary Order**” is issued by the Idaho Department of Water Resources according to section 67-5243 of the Idaho Code. Once IDWR has issued a “Preliminary Order”, there are a variety of options open to the parties in the contested case. These options have specific time deadlines that apply. The time deadlines begin the day the certificate of service has been signed, usually the day the preliminary order is mailed to the parties.

It is important to note that a preliminary order can and will become a final order without any further action of the department unless a party petitions IDWR for reconsideration within 14 days after the preliminary order is issued, or files with the agency exceptions and briefs as further described below:

### **PETITION FOR RECONSIDERATION**

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within 14 days of the service date of this order. The hearing officer then has 21 days from receipt of the petition to act on the petition for reconsideration. If he does not do so, the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code. The IDWR director does not become involved in the process in these types of cases involved with petitions for reconsideration filed with the hearing officer.

### **EXCEPTIONS AND BRIEFS**

The Director does become involved in those cases where exceptions or briefs have been filed. Within 14 days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within 21 days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party’s position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to a preliminary order, opposing parties shall have 14 days to respond to any party’s appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

### ***ORAL ARGUMENT***

If the Director grants a petition to review the preliminary order, the Director shall allow all

parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

## **CERTIFICATE OF SERVICE**

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 302 and 303. The date of service is the date the preliminary order is mailed by certified mail to the parties.

## ***FINAL ORDER***

The Director will issue a final order within 56 days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within 21 days.

## **APPEAL OF FINAL ORDER TO DISTRICT COURT**

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within 28 days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.